

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID DIWBY,

Plaintiff,

-against-

THE CITY OF NEW YORK; NEW YORK CITY POLICE  
DETECTIVE LAWRENCE AVVENIRE, Shield No.  
10498; NEW YORK CITY POLICE SERGEANT "FNU"  
[First Name Unknown] SINATRA; NEW YORK CITY  
POLICE DETECTIVE ERIC MOY, Shield No. 02788;  
JOHN DOES; RICHARD ROES,

**RULE 68  
OFFER OF JUDGMENT**

17 Civ. 9808 (LGS)

Defendants.

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Pursuant to Rule 68 of the Federal Rules of Civil Procedure, defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy hereby offer to allow plaintiff David Diwby to take a judgment against the City of New York on the terms specified herein.

This offer of judgment shall be entered against the City of New York only, in the amount of Ten Thousand and One (\$10,001.00) Dollars, plus reasonable attorneys' fees, expenses, and costs to the date of this offer for plaintiff David Diwby's federal claims.

This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy, or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

This offer of judgment may only be accepted up to and including July 12, 2018.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy, or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff has suffered any damages.

Acceptance of this offer of judgment will act to release and discharge defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by plaintiff arising out of the facts and circumstances that are the subject of this action.

Acceptance of this offer of judgment also will operate to waive plaintiff's rights to any claim for interest on the amount of the judgment.

Plaintiff David Diwby agrees that payment of Ten Thousand and One (\$10,001.00) Dollars within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless plaintiff received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide, payment in full or in part. If plaintiff David Diwby is a Medicare recipient who received medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date plaintiff submits to counsel for defendant City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy a final demand letter from Medicare.

By acceptance of this Rule 68 Offer of Judgment, plaintiff David Diwby agrees to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer, and a Medicare Set-Aside Trust shall be created, if required by 42

U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26. Plaintiff David Diwby further agrees to hold harmless defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, regarding any past and/or future Medicare payments, presently known or unknown, made in connection with this matter.

The judgment shall contain and recite the terms and conditions set forth herein.

Dated:           New York, New York  
                June 28, 2018

ZACHARY W. CARTER  
Corporation Counsel of the  
City of New York  
*Attorney for City of New York, Lawrence Avvenire,  
Mark Sinatra, and Eric Moy*  
100 Church Street, Room 3-200  
New York, New York 10007  
(212) 356-5044

By

  
Christopher G. Arko  
*Senior Counsel*

To:           VIA HAND DELIVERY  
                Jeffrey Rothman, Esq.  
*Attorney for Plaintiff*  
                315 Broadway, Suite 200  
                New York, New York 10007

Jeffrey A. Rothman  
Attorney at Law  
315 Broadway, Suite 200  
New York, NY 10007  
Tel.: (212) 227-2980; Cell: (516) 455-6873  
Fax: (212) 591-6343  
rothman.jeffrey@gmail.com

June 29, 2018

**By Email and Hand Delivery To:**

Christopher Arko, Esq.  
Assistant Corporation Counsel  
NYC Law Department  
Special Federal Litigation Division  
100 Church Street  
New York, NY 10007

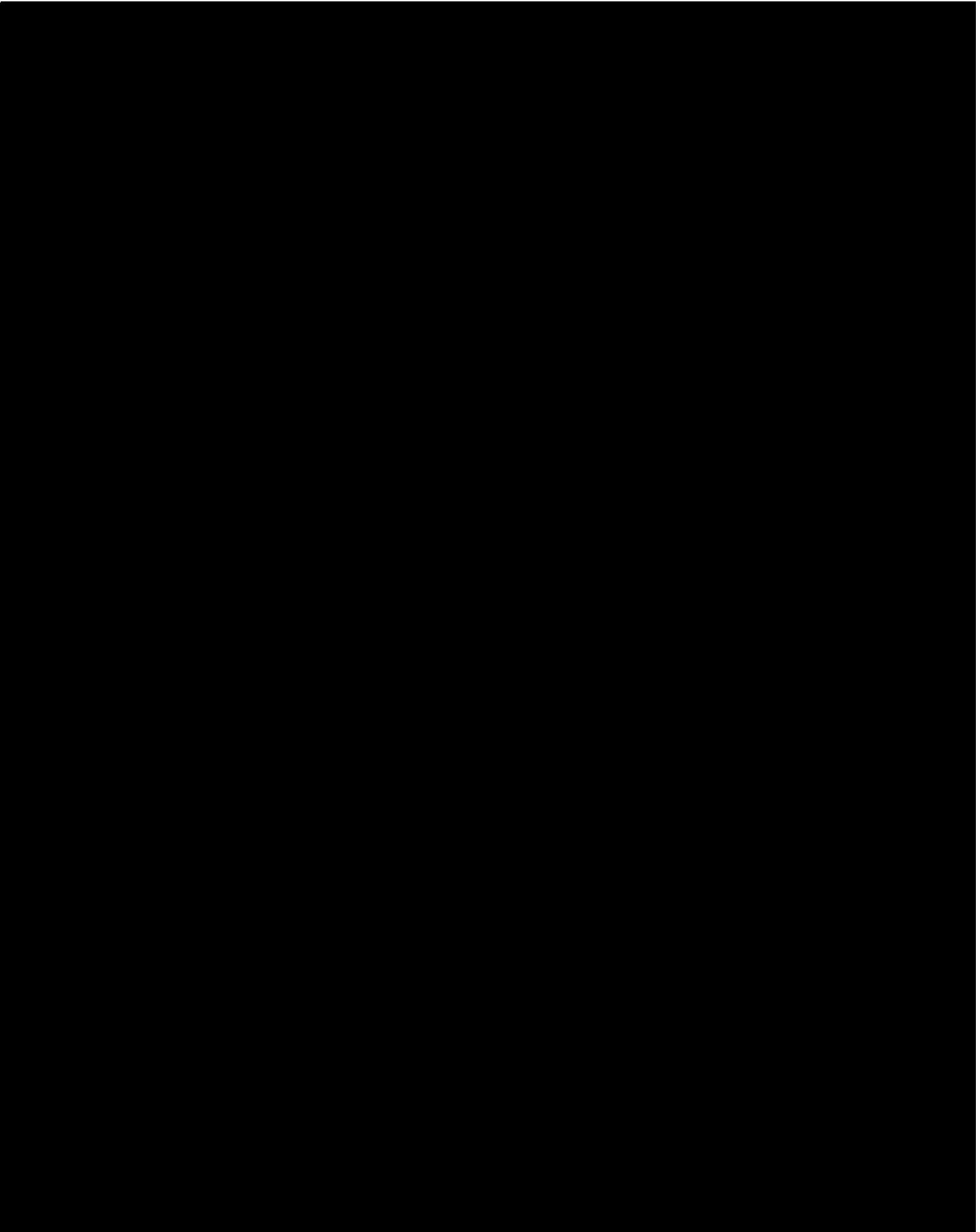
Re: Diwby v. City of New York et al., 17 Civ. 9808 (LGS) (DCF)

Dear Christopher:

Plaintiff hereby accepts Defendants' Rule 68 Offer of Judgment of June 28, 2018.

CITY OF N.Y. LAW DEPT.  
OFFICE OF CORP. COUNSEL  
COMMUNICATIONS UNIT

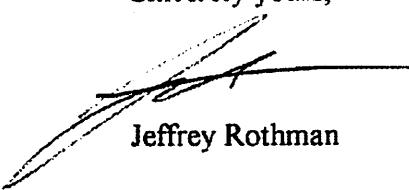
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[Redacted]

Thank you for your consideration in this matter.

Sincerely yours,

  
Jeffrey Rothman

encs.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
- - - - -  
DAVID DIWBY,

Plaintiff,

-against-

THE CITY OF NEW YORK; NEW YORK CITY  
POLICE DETECTIVE LAWRENCE AVVENIRE,  
Shield No. 10498; NEW YORK CITY POLICE  
SERGEANT "FNU" [First Name Unknown]  
SINATRA; NEW YORK CITY POLICE DETECTIVE  
ERIC MOY, Shield No. 02788; JOHN DOES;  
RICHARD ROES,

**PROOF OF SERVICE**

17cv9808 (LGS)

Defendants.

- - - - -  
STATE OF NEW YORK )  
                      )  
                      )ss.:  
COUNTY OF NEW YORK )

I, Jeffrey A. Rothman, hereby affirm under the penalties of perjury:

I am not a party to this action, I am over 18 years of age and I am self-employed as an attorney at 315 Broadway, Suite 200; New York, New York, 10007. I am counsel for the Plaintiff in the above-captioned action, and am admitted to practice in the United States District Court for the Southern District of New York.

On June 29, 2018, at 1:00 p.m., at the New York City Law Department, 100 Church Street, New York, NY 10007, I served Plaintiff's acceptance of Defendants' Rule 68 Offer of Judgment, by personally delivering and leaving a true copy or copies of the aforementioned document with a clerk authorized to accept service, who time-stamped the document to acknowledge receipt of same.

September 14, 2018

  
Jeffrey A. Rothman